

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY THE NINETH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

HON'BLE SMT JUSTICE T.MEENA KUMARI

WRIT PETITION No. 18472 of 1994

Between:

- 1 K. Chandrakala, W/o. K. Srinivas.
R/o. Mailardevpally Village, Rajendranagar Mandal, Ranga Reddy.
- 2 K. Shravan Kumar, S/o. K. Srinivas.
Mailardevpally Village, Rajendranagar Mandal, Ranga Reddy.
- 3 K. Sriramulu, S/o. K. Srinivas.
Mailardevpally Village, Rajendranagar Mandal, Ranga Reddy.
- 4 K. Venkatesham, S/o. K. Srinivas.
Mailardevpally Village, Rajendranagar Mandal, Ranga Reddy.

..... PETITIONERS

AND

The Special Officer & Competent Authority, Urban Land Ceiling,
Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ of Mandamus or any other appropriate writ or writs, order or direction, declaring and setting aside the proceedings issued under Section 10(1) of the Urban Land (Ceiling & Regulation) Act, 1976 published in AP Gazette dated 16/02/1993 to the extent of the lands of petitioners in Sy.No.95/1 admeasuring Ac.8.00 and Sy. No. 120 admeasuring Ac.10.20 gts situated at Mailardevpally Village, Rajendranagar Mandal, Ranga Reddy Dist., by further setting aside the order dated 31/08/1988 passed in Procs.No.D1/12895/76 on the file of the respondent herein, as illegal, arbitrary and without jurisdiction, Award costs, and

Counsel for the Petitioners: MR.K.RAGHUVeer REDDY

Counsel for the Respondent : GP FOR ASSIGNMENT

The Court made the following :

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ORDER:

This writ petition is filed seeking to declare the proceedings issued under Section 10(1) of the Urban Land (Ceiling & Regulation) Act, 1976 published in AP Gazette dated 16/02/1993 to the extent of the lands of petitioners in Sy.No.95/1 admeasuring Ac.8.00 and Sy. No. 120 admeasuring Ac.10.20 gts situated at Mailardevpally Village, Rajendranagar Mandal, Ranga Reddy Dist., as illegal, arbitrary and without jurisdiction and to set aside the same and further set aside the order dated 31/08/1988 passed in Procgs.No.D1/12895/76 on the file of the respondent herein.

The main grievance of the petitioners is that they inherited the agricultural lands in Sy.No.95/1 admeasuring Ac 8.00 guntas and Sy.No.120 admeasuring Ac 10.20 guntas situated at Mailardevapally village from their father K.Srinivas. The above lands are agricultural lands and are not covered by the provisions under Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act'). The father of the petitioners 2 to 4 and husband of first petitioner filed a declaration under Section 6 (1) of the Act before the respondent in CC No.D1/12895/76 and that the authorities have issued a draft statement under section 8(1) of the Act declaring that the father of petitioners 2 to 4 holds excess land to an extent of 73866.88 sq.mts. Subsequently, though their father filed objections with regard to draft statement, final orders were passed under Section 8(4) of the Act on 31.8.1988 and that subsequently even though their father died on 13.9.1991, yet on the name of the dead person a notification was issued under section 10(1) of the Act in the impugned Gazette on 16-2-1993, which is arbitrary and illegal.

It is their further case that though the impugned order dated 31.8.1988 was passed under Section 8(4) of the Act, and subsequent notification under Section 10(1) was issued, their father was not served with the said final order as per the statutory rules framed under Rule 5 of the Act and hence the impugned order passed under section 8(4) of the Act and the pursuant notification issued under Section 10(1) of the Act are illegal and are null and void. It is also stated that the lands in question are not vacant lands within the meaning of the Act and Mailardevpalli village was not covered under the master plan and that the petitioners are using the land for agricultural purpose only.

It is further stated that in view of the government order in G.O. Ms.No. 733 dt.31-10-1988 issued by the Government by exercising the powers under Section 20(1)(a) of the Act exempting to a maximum extent of 5 acres of land, there cannot be any excess vacant land. Hence, the writ petition.

A counter affidavit has been filed by the respondents denying the averments made in the affidavit and stating that pursuant to the declaration filed by K. Srinivas, i.e., father of petitioners 2 to 4 and husband of first petitioner, provisional orders u/s. 8(1) and (3) were passed on 4-1-1985 and that after determining the objections filed by the declarant, final order under Section 8(4) was passed on 31-8-1988 and the same was served on the son of the declarant i.e., 2nd petitioner herein. It is further stated that so long as the land was mainly used for agricultural purpose, the same shall not be treated as Urban Land and when once the user was changed, it would become automatically vacant land within the meaning of Sec 2(q) of the Act, and since the declarant has changed the land from agricultural use to residential purpose, the said land attracts the provisions of the Act.

It is further stated that the final order u/s. 8(4) was sent to declarant through RPAD but the same was returned stating that the addressee was absent and hence the same was served on the 2nd petitioner on 21-11-1988. Therefore, the proceedings are not to be made null and void as requested in the writ petition.

It is further stated that though the Government issued the G.O.Ms.No.733, dt.31-10-1988 exempting to a maximum extent of 5 Acres of land, since final order under Section 8(4) of the Act was passed on 31-8-1988, the benefit of the above G.O was not extended to the case of the petitioners. The fact of death of the declarant K.Srinivas was not brought to the notice of the officials by the petitioners. Hence, the orders and pursuant proceedings passed by the respondent are strictly as per law and there is no irregularity and hence prays to dismiss the writ petition.

Learned counsel for the petitioners contended that since declaration was filed by the late father of the petitioners 2 to 4, K. Srinivas on his behalf and on behalf of his wife and major son, the same is not binding on the other petitioners. He further contended that the draft statement was issued under Section 8(1) of the Act declaring that late K. Srinivas holds an extent of land of 73866.88 sq. meters and even though the objections are filed, final order was passed under Section 8(4) of the Act but the same was not served on the father of petitioners 2 to 4 though he was alive by then and who died on 13-9-1991 and further draft notification under Section 10(1) was issued on 10-1-1993. He also contended that having come to know about the Gazette notification, the petitioners had the knowledge of passing of final orders

under Section 8(4) of the Act. Under the above circumstances, they filed the present writ petition.

Learned counsel for the petitioners further argued that the village in which the lands are situated is included in the master plan up to 1980 and the above fact has not been taken into consideration by the authorities and they have chosen to pass orders under Section 8(4) which also followed by the Gazette notification under Section 10(1) of the Act. Learned counsel also submitted that in the absence of any orders under Section 8(4) being served on the declarant, the subsequent action of the respondents in effecting the Gazette notification under Section 10(1) is a *non-est* in the eye of law and also is not in conformity with the provisions of the Act and hence, the entire proceedings, including the Gazette publication have to be quashed.

Learned Government Pleader for Assignments appearing on behalf of the respondent contended that the final order under Section 8(4) of the Act was passed on 31-8-1988 confirming the provisional order passed under Sec.8(1) and the same was served on the second petitioner herein who is the son of the declarant on 21-11-1988 and as such it cannot be a ground for the petitioners to contend that the final order was not served on the declarant. He also contended that the declarant has changed the land from agricultural use to residential purpose and hence, the provisions of the Act would apply to the present circumstances of the case.

Heard both the sides. Perused the material available on record. However, it has to be observed that even for argument sake, that Section 8(4) order has been served on the second petitioner herein who is the son of the declarant, a reading of which itself goes to show that the contention raised in the counter affidavit herein has not been made as basis for coming to such a conclusion that the father of the second petitioner holds excess land. It is also a fact that the competent authority has utterly failed to discuss about the usage of the land from agricultural to non-agricultural as stated in the counter. In the absence of any observations with regard to usage of land in the final orders passed under Section 8(4), the basis for passing final orders under Section 8(4) cannot be supported by giving reasons in the counter.

It has to be further observed that there cannot be any objection from the respondent to the fact that as on 16-2-1993 by which date the Gazette notification was published under section 10(1) of the Act, the father of the second petitioner was not alive and

as such possession cannot be taken from a dead person. Even on that ground also the notification under section 10(1) has to be an order, which cannot be implemented. Further, in view of the statement made by the respondent in the counter that the declarant has changed the land from agricultural use to residential purpose, the petitioners were not given opportunity to prove their case and hence in the absence of any material to substantiate the above contention it has to be held that the order passed under section 8(4) and also the subsequent action of the respondent in publishing the Gazette notification under Section 10(1) of the Act, when the original declarant was not alive, is held to be not in conformity with the provisions of the Act.

Under the above circumstances, the order passed on 31-8-1988 and the pursuant Gazette notification dt.16-2-1993 with respect to the lands in question are quashed and matter is remitted to the respondent ie., Special Officer & Competent Authority, ULC, Hyderabad for passing appropriate orders afresh in accordance with the provisions of the Act after affording an opportunity to the petitioners to prove their case.

With the aforementioned observations, the writ petition is allowed. No costs.

T. MEENA KUMARI, J

Dt. 09/06/2005

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To

1. The Special Officer & Competent Authority, Urban Land Ceiling, Hyderabad.
2. Two CCs to GP for Assignments, High Court buildings, Hyderabad(OUT)
3. Two CD copies.

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HON'BLE SMT JUSTICE T.MEENA KUMARI

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09th June 2005